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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,668	10/17/2003	Gregg L. Sheddy	TN-3305	2621
7590 03/15/2006				
Black & Decker Inc. 701 E. Joppa Road, TW-199 Towson, MD 21286			EXAMINER BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,668

Applicant(s)

SHEDDY ET AL.

Examiner

Carolyn T. Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the Pre Appeal Brief filed on January 30, 2006.
2. The text of those sections in Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (6,272,961) in view of Jameson (3,777,792), Weissman (4,885,965), Mayfield (5,063,806), Rueb (5,577,428), Welch (5,906,538), Greenland (6,080,041), and Gorgol et al (6,273,081).

Regarding claim 1, Lee discloses the device substantially as claimed including a saw comprising: a base (50); a frame assembly (20) disposed on the base (50); a first rail (221) disposed on the frame assembly (20), the first rail (221) having a longitudinal axis; a table (30) slidably disposed on the first rail (221), the table (30) being movable in a direction substantially parallel to the longitudinal axis; a saw assembly (60) disposed on at least one of the base (50) and the frame assembly (20), the saw assembly (60) comprising a support assembly (23), a motor assembly (41) pivotably supported by the support assembly (23), the motor assembly (41) being pivotable about a pivot axis substantially parallel to the longitudinal axis, and a cutting wheel (42) driven by the motor assembly (41), the cutting wheel (42) having a plane substantially parallel to the pivot axis; and a switch (on controlling head 45) electrically connected to the motor assembly (41). Lee fails to disclose the switch remains stationary when the motor is pivoted. Jameson, Weissman, Mayfield, Rueb, Welch, Greenland, and Gorgol et al

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disclose saws with switches in various locations. These references are cited as cumulative evidence that a switch can be placed almost anywhere on a saw. Thus, even though the specific location of the switch that Applicant is claiming is not specifically taught, the indication from the prior art is that the location of the switch would have been an obvious matter of choice dependent on the suitability of that location for whatever desired reason, such as dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a switch on the saw as claimed, as suggested by Jameson, Weissman, Mayfield, Rueb, Welch, Greenland, and Gorgol et al, on the Lee device in order to accommodate dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product.

In addition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the switch in an alternative location in order to accommodate dexterity, eye coordination, or standing position of the operator, ease of manufacturing, or position of the work piece and/or product since it has been held the shifting of parts to different positions is a known variable. *In re Japikse*, 86 USPQ 70 (CCPA 1950).

Regarding claim 2, Lee discloses the first rail (221) has a first end, and the table (30) is movable beyond the first end.

Regarding claim 3, Lee discloses the table (30) is movable beyond the base (50).

Regarding claim 4, Lee discloses the base (50) is formed as a tub.

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4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee as applied to claim 1 above, and further in view of Klingens (2,691,398). Lee fails to disclose the frame is made of aluminum. However, Klingens discloses a saw wherein the frame is made of aluminum. Aluminum is a good material choice for a sturdy component such as a frame because it can be easily used in casting operations. See col. 2, lines 29-34. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use aluminum for the frame, as disclosed by Klingens, on the Lee device because aluminum can be easily used in casting operations.

Response to Arguments

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

While Applicant argues the position of the switch is critical, the criticality of the switch is not presented in the original disclosure. In addition, additional prior art has been cited related to the location of switches on sawing devices, as detailed above.

While differences may exist between the prior art of record and Applicant's device, these differences have not been claimed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

March 9, 2006


Allan N. Shoap
Supervisory Patent Examiner
Group 3700